

DOCUMENT RESUME

ED 190 150

IR 008 668

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TITLE The Joy of Contracts.
INSTITUTION Tacoma Public Library, Wash.
PUB DATE Jun 79
NOTE 42p.: Publication partially funded by the Washington State Library Commission.
AVAILABLE FROM Tacoma Public Library, 1102 Tacoma Ave. So., Tacoma, WA 98402 (\$6.00).
EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Contracts; *Libraries; *Library Automation; *Library Circulation; Library Technical Processes
IDENTIFIERS *Vendors

ABSTRACT

This paper is a practical guide that explains and illustrates contracts between libraries and vendors for computerized circulation systems. It describes the elements of a typical contract to include the equipment and services that should be specified in the contract and establishes scheduling and acceptance testing needs. Included in a contract may be provisions for training; statements of library and vendor obligations; warranty data; patent, copyright, and license protection; system maintenance; loss and damage insurance; contract modification waivers; defaults and remedies; performance bonds; progress reports; delivery and installation schedules; payment schedules; licensing agreements; and tax obligations. Sample exhibits provide schedules of hardware, supplies, and implementation; escrow agreements; program license agreements; acceptance test plans and procedures; hardware maintenance and installation services contracts; and performance bonds. (RAA)

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THE JOY OF CONTRACTS*

American Library Association
Dallas, Texas
June, 1979

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Tacoma, WA 98402

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* The printing of this publication was funded in part by a Library Services and Construction Act Grant from the Washington State Library Commission.

IR008668

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COMPUTERIZED CIRCULATION CONTROL SYSTEM

CONTRACT ELEMENTS

Contract Documents

- A. Contract (Agreement) Proper
- B. Request for Proposal (Specifications) RFP
- C. Vendor's Response to RFP
- D. Exhibits

A. Agreement

I. System (What is Being Procured)

Definition: System is defined as: (1) Software, (2) Terminals and Modems and (3) Central Processor and other central site hardware, including, but not limited to disks, tape drive, printer and console, to be provided by vendor to library in accordance with contract documents.

II. Schedule

Describes in narrative form what is going to be delivered when and establishes key milestones. The actual detailed schedule with milestones and delivery dates should be appended to the agreement, referenced in the contract where appropriate. As an exhibit, it is an integral part of the contract.

III. Standards of Performance - Acceptance Testing

Acceptance testing establishes clear criteria for acceptance of the system by the library. This area is one of the most critical elements of the contract. The types and number of acceptance tests required will depend on how complex a system is being acquired. Does the circulation system include other modules? Acquisitions, on-line catalog, public access on-line catalog, etc. These additional modules, if present, have their own unique specifications and should be performance tested against these specifications.

(Exhibit I is offered as a model System Reliability Acceptance Test.) The five acceptance test plans which are briefly described are illustrative of conditions which will vary from library to library, and the use of more than one is contingent on each library's unique set of specifications. At a minimum, the system reliability acceptance test should be used.

An acceptance test plan essentially should say that the system will be accepted when it performs according to specifications using data volumes specified within time limits specified.

A. System Reliability Acceptance Test

Once the equipment has been delivered, installed and connected to the power lines and telephone lines supplied by the library, the vendor shall certify in writing that the system is operational and ready for use. (If the vendor is supplying a machine readable data base or is obligated to load a machine readable data base regardless of its source, then appropriate language needs to be written requiring the demonstration that the system can accomodate conversion, both bibliographic and patron.) At this time the system reliability acceptance test may begin. The system must operate at an average level of effectiveness of ninety-eight per cent (98%) or more for a period of sixty (60) consecutive library workdays, not calendar days, to meet the library's standard of performance. If average system downtime exceeds two per cent (2%) for a sixty day period, the system shall be deemed to have not met the level of effectiveness, and the system reliability acceptance test shall begin anew. The vendor shall have a period of not more than 180 days to satisfy this requirement.

B. Circulation Control Functional Control Acceptance Test

The purpose of this test is to verify that the software delivered actually performs those functions the vendor agreed to provide in his written proposal to the library's RFP. The test shall commence after the successful completion of the system reliability acceptance test and shall use the library's data files then in the system. Vendor representatives are expected to observe and assist in conducting the test.

Each function or procedure listed in the contract between the vendor and the library will each be separately used and reviewed to ensure that each circulation function is provided and is properly and accurately executed by the computer system. Circulation control software shall not be accepted by the library until all of the required functions perform in a satisfactory manner as documented in the circulation control functional performance acceptance test.

C. On-line Catalog Functional Performance (if appropriate)

This test may be conducted at the same time as the circulation control functional performance acceptance test. Again, the test ensures that the software delivered actually performs those functions the vendor agreed to provide in his response to the library's RFP. The on-line catalog software will not be accepted by the library until all of the required functions perform in a satisfactory manner as documented in the on-line catalog performance acceptance test.

D. Circulation Control Full Load Response Time Acceptance Test

The purpose of this test is to demonstrate that the system is capable of meeting the response time criteria contained in the appropriate section of the library's specifications at user terminals under full load conditions.

For circulation control, full load shall mean X terminals operating as circulation terminals performing a minimum of twenty (20) check-out and check-in transactions per minute per terminal. At least X terminals shall be remotely connected to the computer by telephone lines. X terminals shall be operating as inquiry terminals performing patron, author, call number and title inquiries and a minimum of two inquiries per minute shall be made from each terminal. X terminals shall function as data entry terminals to enter title and item information or patron registration information at the rate of 15 items per hour. At some point during the circulation control full load response time acceptance test, data from a portable terminal (if appropriate) shall be accepted and processed by the computer. While this test is proceeding, the system shall simultaneously prepare and print overdue notices, patron notices or management reports.

The full load response time acceptance test shall commence when at least X% of the library's collection has been converted. (The more the file size of the system approaches the actual ultimate file size, the better will be the acceptance test. One of the basic purposes of the test is to effect a simulation of peak load conditions which will certainly occur when the system is fully up and running throughout the central and remote sites. Ideally, it is preferable to wait until the actually configured sites are operational. However, this may not always be possible. Usually, a percentage of the payment to the vendor is tied to the passage of the full load response time acceptance test. Consequently, many libraries will have to simulate the peak conditions.) Generally, the test should run for one hour. The library will provide terminal operators and data recorders for each terminal. The vendor and the library may provide inspectors. At the end of the test all records and logs will be collected and the average response times for each category will be calculated by library personnel. The average response time shall be the total of all the transaction times in each category and at the on-line terminals divided by the total number of all the transactions in that category at on-line terminals.

The circulation control full load response time acceptance test shall be successfully met when the average response time for each response time category is within the response time categories as specified in the library's specifications.

E. On-line Catalog Full-load Response Time Acceptance Test (if appropriate)

This test is designed to demonstrate that the system is capable of meeting the response time criteria as specified in the library's specifications for all user terminals - public access, on-line catalog terminals and circulation control terminals. The test may be performed, at the vendor's option, concurrently with the circulation control full-load response time acceptance test.

For on-line catalog, full-load shall mean all of the previous specified terminals for circulation control plus X terminals operating as public access on-line catalog terminals performing a minimum of two (2) transactions per minute. X of these public access on-line catalog terminals will be remotely connected by telephone lines and will be located at a remote site. Some of the inquiries will be subject searches.

(NOTE: The X in items D. and E. will depend on the total number of terminals in any system and the distribution of these terminals between a central site and remote site(s), and the number of public access terminals as specified by each library.)

The on-line catalog full-load response time acceptance test shall be successfully met when the average response time for each response time category is within the response time standard as specified in the library's specifications. For procedures to be followed for the test itself, refer to those described in D. immediately above.

IV. Training

Without adequate training of library and other personnel, the circulation control system is doomed to failure. The program of training should identify classes of personnel to be trained, the levels of training to be provided, number and duration of training sessions, etc., all at no cost to the library. Provisions should be made for follow-up and continuing training whenever the vendor makes modifications to the system, again, at no cost to the library. The complete program of training must be provided by the vendor prior to the library's acceptance of the system, preferably before the beginning of the Acceptance Test Period.

Personnel to be Trained

- A. Administrative Staff - should be presented with capabilities of system - an overview and description of the system. At least two (2) sessions of four (4) hours each.
- B. Supervisory Personnel directly in charge of the equipment and key staff shall be trained in sufficient detail to permit the supervisor and/or key staff members to:
 - 1. Readily perform all supervisory override and operator functions unassisted;
 - 2. Know common causes for equipment lock-up or jam and the remedial action for each;
 - 3. Identify and satisfy all points of library preventive maintenance on the hardware, where applicable;
 - 4. Instruct student assistants in the effective use of the equipment;

5. Be informed of all additional information felt necessary by vendor relating to the System and its procedure to insure a successful operation.

User documentation for operation of the circulation system shall be made available prior to training sessions.

- C. Operator training for student assistants and clerks who will be responsible for operating the system shall be of sufficient depth and duration to instill correct operating procedures and error correction techniques. In addition, vendor shall provide one training session for student assistants and clerks after the date of acceptance of the system by the library at a mutually agreed upon time and place.

User documentation for operation of the circulation system shall be made available prior to the training sessions.

- D. Vendor shall provide training to designated representatives of the City of Tacoma Data Processing Department and the Washington Library Network to ensure system comprehension.
- E. Follow-up training due to modifications by vendor to the system shall be furnished at the expense of vendor.

V. Library's Obligations

Clear statement and definition of the Library's obligations, such as:

- A. Project Manager - Designation of a Project Manager who will act throughout the project as the liaison person between the library and the vendor. This person should not be the Director. Preferably a staff member knowledgeable about the specifications with strong supervisory skills. It is axiomatic that s/he should have a tested, proven automation background.
- B. Site Preparation - The performance of structural electrical, air-conditioning, and other necessary modifications to the mutually agreed upon site in . . . , and (where applicable) environmental and other (i.e. electrical modifications to the branch libraries, according to the manufacturer's specifications furnished by the vendor (automated circulation control). All modifications should be completed prior to the scheduled date or delivery of equipment, at the library's expense.

C. Communication Lines (Telephone)

D. Provision or working space and amenities for vendor staff.

E. Data Base

NOTE: In the event of a delay caused by the library, not amounting to a default under the terms of the agreement, the complete remedy shall be an extension of time equivalent to the delay period.

VI. Patent, Copyright and License Protection

Requires the vendor, at its own expense, to defend any suit which may be brought against the library to the extent that it is based on a claim that the system and its components infringes patents, copyrights, licenses or trade secrets, and in any such suits, the vendor will pay those costs and damages finally awarded against the library.

VII. Warranty

The vendor warrants the system and all parts thereof and all goods and services to be free of defects in materials and workmanship for a period of one year following the installation and acceptance of the system. All system failures which result from such defects that occur within this period, not including those attributable to the telephone service, will be repaired at the expense of the vendor.

NOTE: Generally, the vendor will not warrant against nor will it be liable to third parties, nor will it be liable for loss or damage arising from circumstances not subject to its control.

NOTE: Usually the vendor will insist that he not be liable for consequential damages. If the library reaches an impasse with the vendor on the matter of consequential damages, then it is best to insist that both parties should be protected from consequential damages, as follows:

"Neither party shall be liable to the other for any indirect, special or consequential damages."

Warranties of Merchantability and Fitness for a Particular Purpose

The uniform commercial code, operational in 48 of the states, imposes by law, an implied warranty of merchantability and an implied warranty of fitness for a particular purpose on goods sold by a vendor. These implied warranties imposed by law, may be severely limited or removed by contractual agreements of the parties. The library should be aware of a vendor supplied clause usually found under "limitation of liability" to the effect that any other warranties (other than those listed in the warranty provision of the contract) implied or expressed are excluded from the contract. If the library agrees to such a clause, it may be negating the very law which was passed for consumer protection.

VIII. Maintenance of System

NOTE: This is an area of much misunderstanding and disagreement. Librarians and others are under the impression that the vendor's warranty protects the system for one year following the acceptance of the system. It does, but only provided that the system is maintained at the library's expense during that period.

A. Hardware

The type of maintenance contract is contingent upon the system as configured in any given site. Ideally, there should only be one (1) maintenance contract for hardware. If all the equipment is manufactured by one hardware vendor, it is possible to contract with that manufacturer. Generally, this is not so, in which case, the library should procure the services of a third party maintenance contractor. Third party maintenance is usually cheaper than manufacturer maintenance.

Maintenance Contract - Hardware

1. Scope of Contract
2. Equipment Inspection
3. Scope of Maintenance Services
4. Corrective Service - require contractor to be on site within four (4) hours!
5. Inspection

- NOTE: 1. Make sure that the contract covers the library beyond "normal working hours" which are usually defined as the hours of 8:00 a. m. to 5:00 p. m. Monday through Friday. The library should be covered through all hours open. The additional hours of coverage will increase the costs of maintenance.
2. Require the maintenance vendor to carry an inventory of critical parts.

B. Software Maintenance

The circulation system vendor warranty should cover software maintenance of the system through the one year period following the acceptance of the system, provided the library executes a software maintenance agreement with the vendor. This is an area subject to negotiation. A library may opt to have its own data processing staff trained in the vendor's software, and in time take on the responsibility for software maintenance. If a library has this option, the contract should so state with appropriate provisions for costs and training.

The approach to software maintenance will be greatly influenced by the level of programming language used in the system.

C. Warranty of Reliability

At least one library has attempted to negotiate a maintenance contract with the vendor that imposes a penalty for a system that is unable to consistently achieve the 98% reliability standard. The library is insisting that the actual penalty shall progressively increase in size as the deviation of actual reliability increases from the standard. The actual penalty formula is currently under negotiation by the particular library and the vendor of choice. The intent is that monetary penalties would be applied as a credit to the fees paid for the monthly maintenance contract. If the penalties exceed 100% of the monthly maintenance contract over a six-month period, then the vendor would commence to pay the library a negotiated penalty. This is an excellent approach, and if successful, may very well constitute a standard clause in all future contracts with vendors of automated circulation control systems.

IX. Loss and Damage - Insurance

The library assumes the risk of physical loss or damage to any hardware when properly and completely installed by the vendor and the equipment is operating satisfactorily. The library should carry insurance equivalent to the replacement value of the equipment. This may be accomplished through a data processing policy purchased from the library's insurance broker.

X. Modification and Waiver

Makes provision for modification of the contract, always in writing by authorized representatives of the library and the vendor.

XI. Defaults and Remedies

NOTE: In any contract there are at least two parties with rights to be protected and obligations to be discharged. The default provisions are usually the most difficult area of the contract to be negotiated in that the tendency is to be too one sided.

A. What Constitutes Default by the Library

1. Failure or refusal of the library to perform or do any act herein required by the library shall constitute a breach of this agreement. Whenever vendor becomes aware of such breach, its representative shall notify the library thereof in writing. If such breach be not cured in 30 days following such notice, this agreement may be terminated immediately upon written notice of termination being given to the library by vendor.
2. Beginning of the acceptance test period shall be delayed past (stated milestone), because of a failure of the library or because of a delay which is not substantially due to the fault or negligence of the library, but which is not within the control of the vendor.
3. In the event of default hereunder by the library, the vendor shall have the right, upon thirty (30) days' written notice, to terminate this agreement, and it shall recover as damages for the breach thereof, any and all monies expended by it in the acquisition and installation of hardware and in the development of the software, together with an added amount of . . . per cent

to cover overhead and administrative costs, which sums shall constitute the sole and exclusive basis for recovery, and the library shall not be liable for any other damages, consequential or otherwise.

B. What Constitutes Default by the Vendor

1. Failure or refusal by vendor to perform or do any act herein required to be done shall constitute a breach of this agreement. Whenever the library becomes aware of such breach, the Library Director shall notify vendor thereof in writing. If such breach be not cured within (30) thirty days following such notice, this agreement may be terminated immediately upon written notice of termination being given to vendor by the library.
2. In the event that the acceptance test does not begin on or before (stated milestones), vendor shall be subjected to \$200 per day liquidated damages for up to a maximum of 90 calendar days or until the acceptance test is begun. In such event, at any time following (stated milestone), following thirty (30) days' written notice, the library may terminate this agreement.
3. In the event the contract is terminated, vendor shall immediately remove any and all equipment and materials that it has installed or delivered pursuant to this agreement; if vendor fails to do so, the library may remove such equipment and materials and return them to vendor at vendor's expense or store them at vendor's expense.
4. In the event this agreement is terminated prior to (stated milestone), in accordance with . . . , vendor and its surety shall be liable to the library for all payments in conjunction with this agreement to vendor which include, but are not limited to, etc.

In addition, vendor shall pay liquidated damages in the sum of \$100,000 for losses and costs incurred by the library as a result of this agreement and vendor's breach hereof. For the purposes of calculating liquidated damages, the minimal amount is not to be less than \$100,000. On a pro rata basis, computed at the rate of \$800 per working day, the amount of liquidated damages shall increase to \$205,000 on (stated milestone). All liquidated

damages for failure to comply with the terms and conditions of this agreement shall apply until the date on which this agreement is terminated. The liquidated damages provision set forth herein shall be the sole remedy of the library, and is in lieu of any other rights or remedies which the library might under any law or other provisions of this agreement.

5. Specifications - The functional specifications should be addressed early and tied to payments for both hardware and software.

- a. Circulation functions - charge, discharge
- b. Patron functions - blocks, holds, reserves
- c. Reporting functions
 - Management reports
 - Miscellaneous reports

Establish penalties if each category of specification is not delivered and or non-functioning. For the most part, the acceptance test plan will accomplish the same thing.

C. Liquidated Damages, Penalties, etc.

It is axiomatic in law that there can be no damages awarded without proof of an economic loss. Sometimes, it is difficult, if not impossible for an aggrieved party to prove the dollar amount of alleged loss. Historically, courts have permitted parties to contract for liquidated damages. Generally, such provisions say that they have been included because of the difficulty of ascertainment of actual damages. Liquidated damages should attempt to establish a fair approximation of what actual damages would have been, had the parties gone through the tortuous process of establishing them. In the event of delays, or of failure to meet specifications, it is possible to structure a liquidated damages provision in the contract, which provides a formula for compensating the user based on the extent of delays, or based on percentage failure to meet the specifications.

NOTE: The law will refuse to enforce any provision which it deems to be a penalty. A penalty, simply defined, is a punishment that does not fit the crime.

XII. Bond for Faithful Performance

Vendor shall, within ten (10) days after the date of this agreement, execute and file with the library a bond, with corporate sureties approved by the library, for faithful performance in the amount of (usually whatever the amount of the contract) in the form of a bond attached hereto.

XIII. Progress Report

Require verbal and written reports on the status of the project covered by this agreement on a monthly interval basis until the acceptance test period has been completed. Monthly on-site visits by vendor personnel should be required prior to the completion of the acceptance test.

XIV. Delivery and Installation of the System

- A. Establish a date (within ten (10) days following the execution of the agreement) on which the vendor will furnish site preparation specifications for the equipment. The specifications should be in such detail as to ensure that the equipment will operate efficiently. Require the vendor to advise in writing as to the adequacy of the library's planned layout of the equipment thirty (30) days prior to scheduled delivery of such equipment.
- B. Shipments to and from the installation site shall be at vendor's expense.
- C. Vendor personnel shall unpack, uncrate, uncord and perform all work associated with the installation of the system, and shall remove all debris, packing, etc. from the site of installation.
- D. Vendor usually requires a partial payment upon the satisfactory installation of the equipment. Negotiate as low a payment as possible.
- E. Establish penalties for failure to deliver on time. If equipment is being purchased, set \$150 per day as penalty. If equipment is being leased, 1/30th of the basic monthly lease, with a ceiling in either situation of 180 days.
- F. It is preferable to write performance milestones rather than delivery dates. Much will depend on the use to be made of the equipment. Most libraries will be faced with conversion problems involving use of the equipment. This in turn will call for creating and/or loading a data base. Specify milestone again.

XV. Software

A. Vendor

Vendor shall provide software source code and documentation for the system, including program, routines, sub-routines, transaction processors, a complete set of diagnostic routines used for system maintenance and audit, software maintenance, and related items without additional charges, on or before . . . , together with such further additional enhancements for the circulation system as they become available.

B. Conversion (if appropriate)

Vendor shall supply the software to take a machine readable data base and load it onto the system for the purpose of creating a data base in a format accessible by the system within fifteen (15) days following installation of the system, provided that the library will provide vendor with the format of the data base to be utilized prior to the installation of the system.

NOTE: No payments for software should be made to any vendor until such time as the software source code and total documentation for the system is provided. This will protect the library in the event that at a later date the company should go under.

XVI. Payment Schedule - Hardware

- A. The system hardware specified in exhibit . . . , system hardware schedule, shall be delivered not earlier than . . . nor later than . . . , unless approval for delivery prior to that date is given by the Library Director in writing.
- B. Within fifteen (15) days after the date on which vendor demonstrates to the library's satisfaction that the hardware is physically functioning, the library will make payment to an escrow account in the name of vendor to the bank of . . . , ... The payment into escrow shall be the value of delivered and installed system hardware, with payment to be made upon proper invoicing within fifteen (15) days of delivery and proper installation of the system hardware.

- C. The investment of the escrow account shall be made in accordance with the provisions of the escrow agreement attached as Exhibit . . . All interest proceeds from the escrow account shall accrue to vendor as payment for hardware utilization by the library, provided that all costs associated with the escrow shall be paid from the escrow interest.
- D. In the event that this agreement is terminated, as provided for herein, the escrow account shall revert to the library in its entirety, excluding interest paid to vendor. In no event shall the escrow account extend beyond . . . Within fifteen (15) days following acceptance of this system by the library, the escrow account shall be paid to vendor.

NOTE: Not all libraries will be able to use the escrow approach, especially those libraries involved in a lease situation. However, when feasible, the escrow approach is the preferred approach. It offers the greatest protection to the library at the least cost and works as a negative incentive to the vendor to deliver and produce in accordance with established milestones.

XVII. Payment Schedule - Software

The establishment of an appropriate payment schedule for software will depend greatly on the specifications of the library for the circulation control system. If the specifications have been established in a modular form, it will then be possible to establish deliverables at specified intervals, in which case an appropriate payment schedule can be established for the delivery of each module.

It is imperative that a substantial sum of the hardware payment and the software payment be reserved to the library until such time as the total system has been operating successfully. At least a third of the total contracted amount should be withheld, even beyond the satisfactory completion of the acceptance test. This will call for hard negotiation on the part of the library.

NOTE: Alternate Payment Schedule - System (Hardware and Software)

This payment schedule is purely illustrative and is suggested only in those cases where it is not possible to negotiate an escrow approach.

- 40% To be paid upon installation and certification that system is operational.
- 10% To be paid upon successful completion and demonstration of the functional performance acceptance testing.
- 20% To be paid upon successful completion of the system's reliability acceptance testing.
- 20% To be paid upon successful completion of the full-load acceptance testing.
- 10% To be paid when system enhancements are delivered. (If appropriate.)

XVIII. Program License Agreement(s)

Contingent upon the kind of system being procured, the library will want to own the software, or at least have the use of the software within its own library system without having to pay exorbitant recurring fees. The arrangements will vary from vendor to vendor.

XIX. Taxes

1. Types Involved

- A. Sales and Use
- B. Personal Property
- C. Income
- D. Custom Duties
- E. Special Excise Taxes
- F. Public Utility

2. Exemptions and Credits

- A. Exemptions
 - (i) Sales Taxes
 - (ii) Tangible Personal Property Taxes
- B. Investment Tax Credit

NOTE: The taxes to be paid in conjunction with the acquisition of a computerized circulation control system will vary from jurisdiction to jurisdiction and from state to state. The responsibility for paying whatever taxes must be clearly established in the contract. Make sure that the vendor is legally licensed to conduct business within the state.

XX. Exhibits

Schedule of Hardware

Schedule of Supplies

Schedule of Implementation

Escrow Agreement

Program License Agreement

Acceptance Test Plan and Procedures

Hardware Maintenance and Installation Services Contract

Performance Bond

EXHIBIT I

ACCEPTANCE TEST PLAN

- (A) The criteria for acceptance of the System by the Library shall be as set forth in this Section in the Acceptance Test Plan.
- (B) This Acceptance Test Plan will require operation of the System for the Main Library and at least one branch library. The physical collection of the branch library need not yet be converted to OCLC labels before the commencement of the acceptance test. The Library will, in such case, provide appropriate materials to the branch for testing the System.
- (C) The Acceptance Test Plan shall include an acceptance test period of not less than sixty (60) consecutive days, with no more than two (2) percent downtime as set forth in Section V., 1. shall have a period of not more than 180 days to satisfy this requirement.
- (D) The acceptance test period shall begin when gives the Library written notice that the System is installed and fully operational, which event shall occur on or before 3 January 1978.
- (E) If upon completion of the acceptance test period the System meets all acceptance criteria as set forth herein, or if the Library Director agrees to accept the System pursuant to subparagraphs (f) and (g) of Section V, as hereinafter listed, the Library Director shall notify of acceptance of the System in writing.

(F) If the total System downtime as defined herein exceeds two (2) percent; the Library Director agrees to review the respective maintenance logs for evaluation of any major errors. If, in the Director's opinion, any error is not characteristic of an ongoing system, he may exclude its downtime hours from the total downtime calculation.

(G) Options available to the Library if the acceptance test criteria are not fully satisfied within the 180 day limit:

1. Right to terminate this Agreement without liability and declare in breach of this Agreement, and is entitled to remedy set forth in this Agreement.
2. Right to accept the System as delivered and demonstrated.
3. Allow to alter or modify the hardware configuration or the software to enhance ability to meet the acceptance criteria, and restart or extend the acceptance test.
4. Restart or extend the acceptance test.
5. Mutually agree to amend the provisions of the Acceptance Test Plan.

At any time during the acceptance test period, the Library Director may choose to accept the System. To do so, he shall notify in writing that has successfully completed the acceptance test. Upon receipt of said notification, the acceptance test period shall be deemed to be over and the System accepted.

- (H) During the acceptance test period, the Library shall be responsible for operating the System, detecting errors and notifying of System failures.
- (I) If the System fails due to the negligence of the Library or its agents, the time the System is down shall count neither as System downtime nor daily operational time.

(J) Definitions

1. Total System Downtime = $\frac{\text{sum of downtime factors}}{\text{sum of daily operational hours}}$
2. A downtime factor shall be calculated by multiplying the downtime hours by the downtime coefficient, as defined in the Downtime Coefficient Table. (See Note 1)
3. Daily operational hours are those hours between 8:00 a.m. and 9:00 p.m., Monday through Thursday, and between 8:00 a.m. and 6:00 p.m., Friday and Saturday, except holidays, preventive maintenance sessions, and those hours excluded by the Library Director and the Project Manager.
4. Downtime hours are those daily operational hours between the time has been notified of a System failure and the time the System is fully operational, except for those hours excluded in the Downtime Coefficient Table.
5. In case of a hardware failure, the first hour after and the hardware maintenance vendor have been notified of the failure shall count neither as a downtime hour nor a daily operational hour.

- (K) If at any time during the acceptance test period the Library Director and determine that total System downtime will exceed the two (2) percent maximum, upon the Library Director's and mutual agreement the acceptance test shall begin anew.
- (L) The System shall not be materially modified solely to meet the criteria of the acceptance test.
- (M) The procedures for logging and evaluating system failures shall be as set forth in Exhibit IV, entitled Acceptance Test Procedure, attached hereto and by this reference incorporated herein, as though fully set forth at this point. Any disputes as to cause of the failure and its inclusion in the downtime equation shall be submitted to the City of Tacoma Data Processing Department for resolution, whose determination shall be final.

(N) DOWNTIME COEFFICIENT TABLE

Software

Class 1

Critical Operations - Failure

Check-In and Charge Out	1.0
Reserves	1.0
Patron Inquiry	1.0
Item Inquiry	1.0
File Up-Date, On-Line	1.0

Class 2

Non-Critical Operations, Such As

Report Printing

General Inquiry: failure of two of four

item accesses, 24 hour grace period .25 thereafter

Class 3

Other Software Errors (see Note 2) .10 thereafter

Hardware

Mini-Computer (CPU)	1.0
Printer - high speed, 24 hour grace period	.10 thereafter
Printer - console, 24 hour grace period	.10 thereafter
Terminals, installed, per terminal	.10
Disks, both	1.0
Disks, single, if system operational, 24 hour grace period	.10 thereafter
Magnetic tapes, 24 hour grace period	.10 thereafter

Notes

1. At no time shall the downtime coefficient computed for (J)2. above exceed 1.0.
2. When the Library detects Class 3 software errors not addressed in the Downtime Coefficient Table and which do not significantly affect the operation of the System, they shall notify by telephone or in writing. shall have five (5) working days after receipt of all necessary information to fix the failure, after which time a downtime coefficient of .1 shall be applied.

Exhibit I - 5

ACCEPTANCE TEST PROCEDURE

- A. Upon detection of a System failure or error, the Library shall fill out the upper half of the System Failure Report form and notify immediately.
- B. If the error is a hardware error, it shall be the Library's responsibility to notify the hardware maintenance vendor upon request. If the error is a software error, it shall be the Library's responsibility to send to any documentation or materials they request.
- C. Upon resolution of the failure or error, the Library shall fill out the bottom half of the System Failure Report form.
- D. For a hardware failure, the technical analysis of the problem will be supplied by the hardware maintenance vendor. For a software failure, the technical analysis will be supplied by For each System Failure Report, the Library shall make an entry in the acceptance test log.
- E. It shall be the duty of the Project Manager to calculate the downtime factor for each failure or error and enter it on the System Failure Report form and the acceptance test log.
- F. Each Monday during the acceptance test, it shall be the duty of the Project Manager to:
 - 1. Send a copy of each System Failure Report form completed during the previous seven (7) days to
 - 2. Calculate the total System downtime through the previous day and send this information to the City of Tacoma Data Processing Division,

and the Library Director.

6. may contest any downtime factor applied to the acceptance test by the Project Manager.

1. To do so, they must send to the City of Tacoma Data Processing Division within ten (10) working days of their receipt of the Contested System Failure Report:
 - a. A copy of the System Failure Report;
 - b. An analysis of the System Failure, stating their reasons for contesting it;
 - c. A suggestion of what, if any, downtime factor should be applied to the acceptance test.
2. Upon receipt of OSI's notice, the Data Processing Division shall immediately notify the Project Manager that is contesting a downtime factor. The Project Manager shall have five (5) working days to submit in writing to the Data Processing Division the justification for applying the downtime factor.
3. The Data Processing Division shall within ten (10) working days provide to and the Library in writing the downtime factor which will be applied to the acceptance test. In no case shall this downtime factor exceed the factor originally applied.
4. It shall be the duty of the Project Manager to change the original copy of the System Failure Report and the acceptance test log to reflect the new downtime factor to be applied and to recalculate the total System downtime, if necessary.

EXHIBIT II

PROGRAM LICENSE AGREEMENT

Elements

NOW in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. License. Licensors hereby grants to Licensee, effective as of . . . , a non-exclusive and non-revocable license to use the Licensed Program (as hereinafter defined) for the purposes, in the manner, and subject to the terms and conditions set forth herein.
2. Term. The term of this Program License Agreement shall commence on . . . , (unless otherwise agreed by the parties), and shall continue for an initial term of . . . year(s), and shall continue thereafter until terminated as provided herein. This Program License Agreement shall be renewed and extended for terms of one (1) year each, unless Licensee shall notify Licensors in writing of its intent not to renew this Program License Agreement within ninety (90) days prior to the expiration of any such term or extended term.
3. License Fee.
Licensee shall pay to Licensors, as provided in that certain Agreement of even date herewith, by and between the parties hereto, the sum of Thereafter, prior to the commencement of any extended term thereof, Licensee shall pay to Licensors, an annual license fee of
4. Permissible Uses. The permissible use of the Licensed Program by Licensee or its assignees shall be to copy any portion of any Licensed Program from storage units or media into equipment for processing, or to use any Licensed Program in the course of the operation of any Licensed Program. Such use of the Licensed Program shall only be in connection with equipment purchased or leased from vendor for the initial requirements of the system. Such initial requirements shall be defined as all hardware used in conjunction with normal operation of the system for a 3-year period from the date of installation of the system. Each system's equipment shall be determined to meet the needs of the Licensee or its assignees, as mutually agreed upon by the Licensors and the Licensee or its assignees, which has been leased or sold to Licensee or its assignees by Licensors and in connection with the operation

of a computerized library circulation control system, sold to Licensee, or its assignees, by Licensor; further, such use of the Licensed Program shall be solely in connection with the normal business operations of Licensee or its assignees and in connection with the provision by Licensee or its assignees of library services to patrons within the State of Washington.

5. Copies. Licensee agrees not to make more than four copies or partial copies of the Licensed Program for its own use. Licensee further agrees not to make any copies or partial copies for the purpose of supplying them to others, of the Licensed Program or any computer tapes, discs, or other materials furnished to Licensee or its assignees by Licensor, specifically for use in conjunction with the Licensed Program, and agrees to return to Licensor, within ten (10) days following any termination or failure to renew this Program License Agreement any and all copies or partial copies of the Licensed Program, which it may have in its possession or which it may have made or which it may have allowed to have been made, during the term hereof.
6. Ownership. Anything herein to the contrary notwithstanding, the Licensed Program is and shall be for the term of this Program License Agreement and all renewals and extensions thereof, the sole and exclusive property of Licensor.
7. Warranty.
 - a. Licensor warrants that the Licensed Program, when properly used by Licensee in conjunction with equipment that is leased or sold by Licensor to Licensee, shall provide to Licensee, for one (1) year from the date of the acceptance hereof by Licensee, a Computerized Library Circulation Control System described in the certain agreement of even date herewith by and between the parties hereto.

NOTE: Library should negotiate strongly!

1. Consequential damages "neither party shall be liable to the other for any indirect special or consequential damages"
2. Non-waiver or implied warranties of merchantability and fitness for a particular purpose.

b. Licensor does not warrant against, and it shall not be liable to third parties and it shall not be liable for loss or damage arising out of circumstances not subject to its control, such as: improper use or maintenance, acts of Licensee or any other person not employed by Licensor, NOR SHALL LICENSOR BE LIABLE FOR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE OF THE EQUIPMENT, DAMAGE TO OTHER PROPERTY OR LOSS OF PROFITS. This warranty, which is given only to Licensee and its assignees, except as set forth in a. above, IS GIVEN EXPRESSLY AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Confidentiality.

a. Licensee acknowledges that the Licensed Program is proprietary to Licensor and has been developed as a trade secret at Licensor's expense. Licensee shall not knowingly or with gross negligence divulge, nor authorize its assignees or any of its employees, agents, or representatives to divulge any data or other information with respect to the Licensed Program, the technology embodied therein or any other documentation models, descriptions, forms, instructions or other information relating thereto, except as specifically authorized by Licensor, in writing. If Licensee or its assignee or any of its employees, agents or representatives, without proper authorization from Licensor, shall attempt to use, disclose or dispose of the Licensed Program or any of its aspects or components or any duplication or modification thereof in a manner contrary to the terms of this Program License Agreement, Licensor shall have the right, in addition to other remedies which may be available to it, to injunctive relief enjoining such acts or attempts, it being acknowledged that legal remedies available to Licensor are inadequate.

b. Licensor shall have the right to inspect the procedures used by the Licensee to ensure confidentiality of the Licensed Program. Licensee shall comply with all reasonable and customary directions provided by Licensor in order to more adequately ensure such confidentiality.

9. Employee Compliance. Licensee agrees that it shall cause its assignees and each of its employees, agents, and representatives, who shall have access to the Licensed Program or any of its aspects or components or any duplication or modification thereof during the course of its employment, agency or representation to execute an instrument, in a form approved by Licensor, which shall acknowledge his awareness of, and agreement to abide by, the provisions of Section 10 hereof. Licensee and its assignees shall immediately notify Licensor in the event that it believes or has reason to believe that any provision of Section 10 or Section 11 has been, or is about to be, breached.

10. Remedy. In the event of the breach by Licensee or its assignee of any of the terms and conditions of this Program License Agreement, then at any time thereafter, the Licensor shall have the right at the expense of the Licensee to establish its control over the method and form of use of the Licensed Program, in every respect. In addition, Licensor shall have all other rights and remedies which may be available to it at law or in equity.

11. Maintenance. Licensor shall provide upon request of Licensee, and until written notice of Licensee, during the term of this Program License Agreement and any extension or renewal hereof, except as limited by Section 15, hereof, for a purchase price of per month: (a) correction of any program errors reported in writing by Licensee after the commencement thereof; (b) such updates, corrections, amendments and enhancements to the Licensed Program as may be developed from time to time by Licensor. Said price payable by Licensee may be increased by Licensor at any time after one year from the date hereof, at a rate not to exceed fifteen percent (15%) per annum. The payment provided for herein shall not be made until following system acceptance.
12. Modifications by Licensee.
- a. Licensee shall have the right to modify the Licensed Program, upon the giving of ten (10) days' written notice to Licensor, and except as provided in Paragraph 15b hereof, the warranty of Licensor set forth in Paragraph 9 hereof shall be null and void and of no further force and effect as to the portion of the Licensed Program which has been so modified.
 - b. In order for the Warranty of Licensor to be extended to modifications to the Licensed Program proposed by Licensee, Licensee shall provide to Licensor sufficient information and documentation for Licensor to fully evaluate the effect of said modifications upon the Licensed Program; (2) Licensee shall reimburse Licensor, at Licensor's standard hourly rate then in effect, for the time and expenses of Licensor, in making such evaluation; and (3) Licensor shall, within a reasonable time, provide its written consent to the extension of its warranty to the modifications proposed by Licensee.
 - c. If, and in the event, that modifications to the Licensed Program, made by Licensee, as to which the warranty of Licensor has not been extended, shall disclose defects in the warranted portion of the Licensed Program not previously apparent, the Licensor, at its own expense, shall correct said defects.
 - d. Any maintenance or corrections made to portions of the Licensed Program as to which the warranty of Licensor has not been extended, shall be made by Licensor, if requested by Licensee, at the expense of Licensee.

Exhibit II - 4

EXHIBIT III

PERFORMANCE BOND

TO THE TACOMA PUBLIC LIBRARY

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, _____,
as principal, and _____,
a corporation organized and existing under the laws of the State of _____,
as a surety corporation, and qualified under the laws of the State of Wash-
ington to become surety upon bonds of contractors with municipal corporations,
as surety, are jointly and severally held and firmly bound to the TACOMA
PUBLIC LIBRARY in the penal sum of \$ _____, for the payment of which
sum on demand we bind ourselves and our successors, heirs, administrators or
personal representatives, as the case may be.

This obligation is entered into in pursuance of the statutes of the
State of Washington and the ordinances of the City of Tacoma.

DATED at Tacoma, Washington, this 24th day of August, 1977.

Nevertheless, the conditions of the above obligation are such that:

WHEREAS the Director of said Tacoma Public Library has let or is
about to let to the said _____
the above bounner principal, a certain contract, the said contract being
numbered _____ and providing for Computerized Library Circulation Control
System Inc. 7603

(which contract is referred to herein and is made a part hereof as though at-
tached hereto), and

WHEREAS the said principal has accepted, or is about to accept, the
said contract, and undertake to perform the work therein provided for in the
manner and within the time set forth;

NOW, THEREFORE, if the said _____
shall faithfully perform all of the provisions of said contract in the manner
and within the time therein set forth, or within such extensions of time as
may be granted under said contract, and shall pay all laborers, mechanics,
sub-contractors and material men, and all persons who shall supply said prin-
cipal or sub-contractors with provisions and supplies for the carrying on of
said work, and shall hold said Tacoma Public Library harmless from any loss or
damage occasioned to any person or property by reason of any carelessness or
negligence on the part of said principal, or any sub-contractor in the per-
formance of said work, and shall indemnify and hold the Tacoma Public Library
harmless from any damage or expense by reason of failure or performance as
specified in said contract or from defects appearing or developing in the mat-
erial or workmanship provided or performed under said contract within a period

of one year after its acceptance thereof by the Tacoma Public Library, all in accordance with and pursuant to the terms of the attached agreement, then and in that event this obligation shall be void; but otherwise it shall be and remain in full force and effect.

Approved:

Principal:

TACOMA PUBLIC LIBRARY

By _____
Director

By _____

Approved as to form:

Surety:

City Attorney

By _____

Agent's Name: _____

Agent's Address: _____

COUNTERSIGNED

By _____

Exhibit IV

SYSTEM SUPPLY SCHEDULE

Item Identifier Labels

- (A) 325,000 two part labels numbered sequentially, beginning with C000_000_010 and ending with C003_250_000.

A two part label shall be interpreted to mean that the number on the first label shall be duplicated on the label immediately adjacent to the first in a vertical or horizontal relationship.

- (B) 200,000 three part labels numbered sequentially, beginning with C003_250_010 and ending with C005_250_000.

A three part label shall be interpreted to mean that the number on the first label shall be duplicated on the second label and third label, with all labels adjacent to one another in a vertical or horizontal relationship.

- (C) The design of the item identifier label shall be as shown:

3/4"

Cnnn nnn nnn

function code
item identifier

1-3/4"
not to scale

check digit

Cnnn nnn nnn

Cnnn nnn nnn

Cnnn nnn nnn

Cnnn nnn nnn

Cnnn nnn nnn

The decision of vertical or horizontal productions of label is to be made by

Patron Labels

- (A) 75,000 two part labels numbered sequentially, beginning with P00_000_010 and ending with P00_750_000.

This two part label is defined the same as the item identifier label above.

- (B) The design of the patron label shall be as shown:

3/4"

Pnn nnn nnn

1-3/4"

Function code

Patron
Identifier

Check Digit

not to scale

Pnn nnn nnn

Pnn nnn nnn



Label Specifications

- (A) Labels will be printed in standard OCR(A) type style; see layout for labels shown above.
- (B) All labels must contain Avery Perma-grip permanent adhesive as contained on Avery DESIRUX P-5 label or Underwriters Laboratory equivalent.
- (C) Label must meet the following specifications. Face Material: Inorganic matt white. Elmendorf tear resistance 23/23 (HD/CD). Must have good imprintability. Thickness, 2.5 MILS minimum. Must have excellent dimensional stability and be capable of withstanding 300 degree F. upper temperature limit. Adhesive must be compounded acrylic with both high initial and ultimate adhesion. Must have high U-V resistance.
- (D) Label must have a protective coating to avoid smearing of character imprint when applied. The protective spray shall be clear and free of discoloration over time.
- (E) Labels must be continuous carrier with no breaks in carton. Each carton must have labels wrapped in plastic bags or "shrink wrapped."

Delivery

The labels shall be delivered FOB, Tacoma Public Library, Tacoma, Washington, within thirty (30) days following the execution of this Agreement.

Exhibit IV - 2

Retention of Labels

The Library shall retain the labels at cost in the event that this Agreement is terminated.

Price

The above specified labels shall be supplied at a price not to exceed

sample...

EXHIBIT V
SYSTEM HARDWARE SCHEDULE

	<u>Quantity</u>	<u>Model</u>	<u>Description</u>
I. Central Processing Unit	1	8580	NOVA 3/D CPU, 64KW
	1	8534	MULT/DIV
	1	4007	I/O BOARD
	1	4008	ASYN. CONT.
	1	4010	CLOCK
II. Console Printer/Keyboard	1	1620-	DIABLO "HYTERM,"
		3	45 CPS FORMS TRACTOR, INTER- CHANGEABLE FONT (OCR)
III. Systems Printer	1	4014	D.G. I/O INTER- FACE SUBASS'Y
	1	4036	D.G. LINE PRINTER CONTROL
	1	10RAL	CENTRONICS SERIAL MATRIX (7X9) PRINTER, 330 CPS, 132 CHAR. LINE
	1		STAND
	1		96-CHAR. SET LOWERCASE OPTION
IV. Magnetic Tape Drive	1	6021	MAG. TAPE CONT/ DRIVE 9TRK/800 BPI, 60KB WITH SIX (6) 2,400' REELS OF MAG. TAPE
V. Disk Storage	1		CONTROLLER DIVA DISK CONTROLLER FOR CDC DRIVES
	2		DISK CDC STORAGE MODULES, 300 MB/DRIVE
	3		SPARE 300 MB DISK
VI. Communications Multiplexor	1	4251	COMM. MPXV CHASSIS
	2	4255	ALM-8 COMM. MPXR
VII. Cabinet	1	1012	CABINET, 2-BAY

	Quantity	Model	Description
VIII. CRT Terminals	2	B100	BEEHIVE CRT, 1920 CHAR. DISPLAY, U & LC, NUMERIC PAD, 16 FUNCTION KEYS, FORMAT CONTROL, 2ND INTERFACE PORT
	12	B100/ RPI120	TERMINAL W/OCR WAND @ \$4,695
IX. Modems	16	VA12306	REMOTE & CENTRAL SITE MODEMS, FIXTURE, CHASSIS
X. Interface	1	4074	D.G. BINARY SYNCHRONOUS PROTOCOL RJE 80
XI. Cassette Recorder With OCR Wand	1		-----

PRICING SUMMARY*

System Hardware

System Software

ALIS (DSI)

MIS (MEDITECH)

WLN Interface (ALIS 2780/3780

Emulation Module)

Installation

Supplies

Shipping

Maintenance

Tax

*Based on the Implementation Schedule

Exhibit V - 2

EXHIBIT VI

ESCROW AGREEMENT

To: The Bank of California, N.A.
Trust Department
Tacoma, Washington

The undersigned, hereinafter referred to as the "Contractor", has directed the Tacoma Public Library, hereinafter referred to as the "Library", to deliver to you its warrants which shall be payable to you and the Contractor jointly. Such warrants are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. Warrants or checks made payable to you and the Contractor jointly upon delivery to you shall be endorsed by you and forwarded for collection. The moneys will then be used by you to purchase, as directed by the Contractor, bonds or other securities chosen by the Contractor and approved by the Library. Attached is a list of such bonds or other securities approved by the Library. Other bonds or securities, except stocks, may be selected by the Contractor, subject to express written approval of the Library. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the Library as provided in paragraph 4 of this Escrow Agreement.

2. When and as interest on the securities held by you pursuant to this agreement accrues and is paid, you shall collect such interest, deposit it to an escrow savings account, and forward it (less fees) to the Contractor quarterly at its address designated below unless otherwise directed by the Contractor.

3. You are not authorized to deliver to the Contractor all or any part of the securities held by you pursuant to this agreement (or any moneys derived from the sale of such securities, or the negotiation of the Library's warrants) except in accordance with written instructions from the Library. Compliance with such instructions shall relieve you of any further liability related thereto.

4. In the event the Library orders you to do so in writing, you shall, within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you pursuant to this agreement and return such money, together with any other moneys held by you hereunder, including principal and interest, to the Library.

5. The Contractor agrees to pay you as compensation for your services hereunder as follows: as per attached schedule. Payment of all fees shall be the sole responsibility of the Contractor and may be deducted from any property or accrued interest placed with you pursuant to this Agreement unless the Library directs the release in accordance with paragraph four (4) above in which event the Library shall pay compensation to the Bank in accordance with the attached schedule

and the Bank may deduct said fees from any property placed with them pursuant to this agreement. In the event that you are made a party to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this Escrow are not promptly fulfilled, or that you are required to render any service not provided for in these instructions or that there is any assignment of the interests of this Escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the Contractor and reimbursement from the Contractor for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

6. This agreement shall not be binding until executed by the Contractor and the Library and accepted by you.

7. This instrument contains the entire agreement between you, the Contractor, and the Library with respect to this escrow and you are not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice of any default or any other matter, not be bound by nor required to give notice or demand, nor required to take any action whatever except as herein expressly provided; you shall not be liable for any loss or damage not caused by your own negligence or wilful misconduct.

8. The foregoing provisions shall be binding upon the assigns, successors, personal representatives, and heirs of the parties hereto.

The undersigned have read and hereby approve the instructions as given above governing the administration of this escrow and do hereby execute this agreement on this _____ day of _____, 1977

(Contractor)

TACOMA PUBLIC LIBRARY

By _____

By: _____
Director

Approved as to form:

By: _____
President, Board of Trustees

City Attorney

The above escrow instructions received and accepted this _____ day of _____, 1977.

THE BANK OF CALIFORNIA, N.A.
Escrow Agent

By _____
Trust Officer

Exhibit VI - 2

APPROVED SECURITIES FOR LEASE AGREEMENT
WITH THE TACOMA PUBLIC LIBRARY

1. United States Bonds
2. United States Certificates of Indebtedness.
3. Bonds and warrants of the State of Washington.
4. General obligation or utility revenue bonds or warrants of the City of Tacoma, or any other city or town in the State of Washington.
5. Bonds or warrants of a local improvement condemnation award district of the City of Tacoma which are within the protection of the local improvement guaranty fund law.
6. Time deposits in commercial banks.

sample ...

BIBLIOGRAPHY

"Agreement for a Computerized Library Circulation System between DataPhase Systems, Inc. and Tacoma Public Library," Tacoma: 1977 (mimeographed)

Boss, Richard. "Circulation Systems: the options" Library Technology Reports, January-February 1979.

Brandon, Dick H., and Segelstein, Sidney. Data Processing Contracts. New York: Van Nostrand Reinhold, 1976.

"Circulation Systems: Conversion, Site Preparation, Implementation." Proceedings of Circulation Systems 1978: A Workshop on Automated Circulation Control, October 6, 1978, Tacoma: 1978 (mimeographed)

Clinic on Library Applications of Data Processing, University of Illinois, 1977. Negotiating for Computer Services. Champaign: University of Illinois Graduate School of Library Science, 1978.

Educom. Contracting for Computing. Princeton: Educom, 1975.

Freed, Roy N., Computers and Law: A reference work, 5th ed., Boston: R. N. Freed, 1976.

Intergovernmental Board on Electronic Data Processing. Computer Hardware: Procurement and Contracting Guidelines. Sacramento: n.p., 1975.

Kloek, Christopher D., Winning the Computer Game, Santa Barbara: DDC Publications, 1978.

Scaletta, Phillip J., and Walsh, Joseph L., Syntax-legal Analysis of Commercial Computer Purchase and Lease Contracts, Park Ridge: Data Processing Management Association, 1974.

"State Administrative Manual: Electronic Data Processing Lease of EDP Equipment." Sacramento: 1978 (mimeographed)